IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 831 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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SANTOSHBHAI SAVLABHAI VASAVA - Appellant

Versus

STATE OF GUJARAT - Opponent

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Appearance :
MR BS SUPEHIA for the Appellant.
MR KT DAVE, ADDITIONAL PUBLIC PROSECUTOR for the Opponent.
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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 28/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Instant appeal, filed under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against judgment dated September 30, 2002, rendered by the learned Additional Sessions Judge, Bharuch in Session

Case No. 119 of 2000, by which the appellant is convicted for commission of offences punishable under Sections 376, 324 and 506(2) IPC and sentenced to suffer RI for 10 years and fine of Rs. 1,000/- (Rupees One Thousand Only), in default RI for 3 months, for commission of offence punishable under Section 376 IPC as well as RI for 1 year and fine of Rs. 200/- (Rupees Two Hundred Only), in default RI for 2 months, for commission of offence punishable under Section 324 IPC, and RI for 2 months and fine of Rs. 100/- (Rupees One Hundred Only), in default RI for 15 days, for commission of offence punishable under Section 506 (2) IPC.

2. In view of law laid down in **Bhupinder Sharma Vs. State of Himachal Pradesh, (2003) 8 SCC 551**, the name of the victim is not indicated in this judgment.

3. The facts emerging from the record of the case are as under:

At the relevant time, the victim was residing at Tal Fadiya of Ankleshwar Town with her parents. The date of birth of the victim is June 1, 1985. The incident in question took place on March 20, 2000. The day of

incident was a *dhuleti* day. At about 3.30 PM, the victim went to the house of her aunt. When the victim was in the house of her aunt, she was approached by Narmadaben, who is sister of the appellant. Narmadaben asked the victim to come out of house of her aunt to play *dhuleti*. Therefore, the victim came out of house of her aunt and started playing *dhuleti* with Narmadaben. From that place, the victim went to the house of Narmadaben. Narmadaben made her to sit on a cot. At that time, the appellant, who is the brother of Narmadaben, came. Narmadaben asked the victim to go on rear side of her house, as she was called by her brother for playing *dhuleti*. Thereupon, the victim went to the back side of house of Narmadaben. At that time, the appellant embraced her. The victim protested and raised shouts. Thereupon, the appellant took out a knife and caused injury on little finger of her right hand. After causing injury, the appellant threatened her and asked her to keep mum. Thereafter, the appellant took the victim near an open hut, where she was made to lie down on the ground. The appellant removed *pyjama* put on by the victim and committed forcible rape on her. After committing rape, the appellant put on his clothes and went away. The victim, thereafter, started going to

house of her aunt. On way, she met her mother and aunt to whom she narrated the incident. Therefore, her mother and aunt took her to Chauta Police Station where her complaint was written down by PSI Mr. Radhesinh Bhaijubhai Baria. On the basis of complaint lodged by the victim, offences were registered against the appellant. The complaint of the victim was investigated by PI Mr. Yakoob Ambrose Bhatia. The Investigating Officer prepared the *panchnama* of person of the victim and referred her to hospital for medical examination. The Investigating Officer also drew *panchnama* of the place of incident in presence of *panch-witnesses*. During the course of investigation of the complaint, the appellant was arrested and was referred to hospital for medical examination. While in police custody, the appellant made disclosure statement, pursuant to which, knife used by him in commission of offences and clothes, which were put on by him at the time of incident, were recovered. The recovered articles were seized under a *panchnama*. The incriminating articles, which were seized during the course of investigation, were sent to Forensic Science Laboratory for analysis. On completion of investigation, the appellant was chargesheeted in the Court of learned Judicial Magistrate (First Class),

Ankleshwar for commission of offences punishable under Sections 376, 324, 506(2) IPC and Section 135 of the Bombay Police Act.

4. As the offence under Section 376 IPC is exclusively triable by a Court of Sessions, the case was committed to the Sessions Court, Bharuch, for trial, where it was registered as Sessions Case No. 119 of 2000. The learned Additional Sessions Judge, Bharuch, to whom the case was made over for trial, framed necessary charge against the appellant at Exh. 1. It was read over and explained to him. He pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined: (i) the prosecutrix as PW 1, at Exh. 8; (ii) mother of the victim i.e. Laxmiben Mansurbhai Chimanbhai as PW 2, at Exh. 10; (iii) Sister-in-law of mother of the victim i.e. Ramilaben Ratilal Rathod as PW 3, at Exh. 11; (iv) *panch* Ravindra Omkar Pawar as PW 4, at Exh. 12; (v) *panch* Harishbhai Bakorbhai Patel as PW 5, at Exh. 13; (vi) *panch* Ranchodbhai Balubhai Vasava as PW 6, at Exh. 14; (v) *panch* Gafoorshah Gulabhshah Diwan as PW 7, at Exh. 15; (vi) *panch* Purshottambhai Karsanbhai Parmar as PW 8, at Exh. 18; (ix) Ramilaben Panchiyabhai Vasava as PW 9, at Exh. 20; (x) Medical Officer Dr. Mansurali

Shaledbhai Hirani, who examined the appellant, as PW 10, at Exh. 21; (xi) Dr. Kalpeshbhai Zinabhai Patel, who examined the victim as PW 11, at Exh. 25; (xii) PSI Mr. Radhesinh Bhaijibhai Baria as PW 12, at Exh. 30; and (xiii) Investigating Officer Mr. Yakoob Ambrose Bhatia as PW 13, at Exh. 33 to prove its case against the appellant. The prosecution also produced documentary evidence such as: (i) the complaint of the victim, at Exh. 9; (ii) *panchnama* of person of the appellant prepared at the time of his arrest, at Exh. 16; (iii) *panchnama* of recovery of knife and clothes put on by the appellant at the time of incident pursuant to disclosure statement made by him, at Exh. 17; (iv) *panchnama* of place of incident, at Exh. 19; (v) certificate issued by Dr. Hirani after examining the appellant, at Exh. 24; (vi) certificate issued by Dr. Kalpeshbhai Patel after examining the victim at Exh. 26; (vii) *panchnama* of person of the victim, at Exh. 34; (viii) School Leaving Certificate of the victim indicating that her date of birth was June 1, 1985, report of analysis, at Exh. 39, etc. in support of its case against the appellant.

5. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the

appellant the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement, as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the appellant claimed that a false case was foisted upon him by the victim and her relatives, but he was innocent. However, no defence evidence was adduced by the appellant in support of the claim made by him in his further statement.

6. On appreciation of evidence led by the prosecution, the learned Judge held that the testimony of the victim was quite clear, categorical and implicitly reliable. The learned Judge noticed that the testimony of the victim was corroborated by her complaint, which was lodged without loss of time, and also by testimony of her mother and medical evidence on record. The learned Judge noticed that no noticeable improvements and / or embellishments were made by the victim while narrating incident of rape on her nor any major contradictions and / or omissions could be brought on record by the defence so as to impeach her credibility and, therefore, it was safe to act upon her testimony. In view of abovereferredto conclusions, the learned Judge held that it was proved beyond reasonable doubt that on the date of

incident, the appellant had threated as well as caused injury to the victim and subjected her to forcible rape. The learned Judge has, therefore, convicted the appellant under Sections 376, 324 and 506 (2) IPC and imposed sentences enumerated earlier *vide* judgment dated September 30, 2002, giving rise to instant appeal.

7. This Court has heard Mr. B. S. Supehia, learned Counsel of the appellant and Mr. K. T. Dave, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record with reference to broad and reasonable probabilities of the case.

8.1 As noticed earlier, the case of the prosecution is that on March 20, 2000, the appellant had threatened as well as injured the victim and committed forcible rape on her. Therefore, it would be worthwhile to notice her testimony. The victim is examined as PW 1 at Exh. 8. In her testimony before the Court, the victim has stated that she was residing in Tal Fadiya of Ankleshwar Town with her parents and was doing work of cleansing utensils. It is also stated by her that her parents were

also doing labour work and that she was the youngest child of her parents. According to the victim, on March 20, 2000, which was a *dhuleti* day, she had gone to the house of her aunt Ramilaben at about 3.30 PM where she was approached by her friend, Narmadaben, who is sister of the appellant. The victim has stated before the Court that Narmadaben had asked her to come out of house of her aunt to play *dhuleti* and therefore, she had come out of house of her aunt. In her testimony the victim has further maintained that she, in the company of Narmadaben, had gone to the house of Narmadaben where she was made to sit on cot. According to the victim, the appellant had meanwhile come to the house and, thereafter, Narmadaben had asked her to go to rear side of the house, as she was called by the appellant to play *dhuleti*. What is mentioned by the victim before the Court is that thereupon, she had gone to the back side of the house of the appellant to play *dhuleti*, but the appellant had, all of a sudden embraced her. The victim has stated before the Court that she had raised shouts and, therefore, in order to threaten her, the appellant had taken out a knife which was with him, and caused injury on little finger of her right hand. The victim has further stated that thereafter, she was taken to a lonely place where her clothes were removed by the

appellant and after which she was subjected to forcible rape by the appellant. The victim has also stated that after committing rape on her, the appellant had put on his own clothes and gone away, whereas she had started going to the house of her aunt. According to the victim, on her way to the house of her aunt, she had met her mother and her aunt, to whom she had narrated the incident and, therefore, they had taken her to Chauta Police Station where she had lodged her complaint. During the course of recording her testimony, the victim produced complaint lodged by her at Exh. 9. In paragraph-3 of her testimony, the victim has stated that she had studied upto 7th standard and left the school thereafter.

8.2 In her cross-examination, the suggestion, made by the defence that at the time of incident, her age was 15 years, is emphatically denied by her. The suggestion, made by the defence that the appellant had not threatened her nor caused injury to her, is also emphatically denied by her. According to the victim, she was staying in Tal Fadiya since 5 years. The victim admitted that her uncle had good relations with Nizam and Hussain but pleaded ignorance that Nizam was running a grocery shop. The victim also pleaded ignorance about the fact that relations between Nizam and the appellant were strained.

According to the victim, she was not knowing whether Nizam was doing any illegal business. The suggestion, made by the defence that there were 5 to 6 huts on the back side of the house of the appellant, was admitted by her. However, the suggestion, made by the defence that the appellant had not committed rape on her, is emphatically denied by her. According to the victim, 2 to 3 years prior to the day of incident, she was knowing Narmadaben, as she and Narmadaben were studying in the same class. However, the suggestion, made by the defence that she used to visit house of Narmadaben off and on, is emphatically denied by her. According to the victim, the appellant was driving rickshaw and was parking his rickshaw at Chauta stand. The suggestion, made by the defence that she was in love with the appellant, is also emphatically denied by her. The suggestion, made by the defence that she had sustained injury on her little finger of her right hand while climbing the wall on which pieces of glasses were fitted, is also emphatically denied by her. The suggestion, made by the defence that she had filed a false complaint against the appellant, is also denied by her.

9.1 This is all what transpires from the testimony of the victim. On appreciation of evidence of the

prosecutrix, this Court finds that the victim has narrated the incident of rape on her in a natural manner without making any noticeable improvements. No major contradictions and / or omissions could be brought on record by the defence so as to impeach her credibility. The witness stands completely corroborated by her complaint which was lodged on the date of incident itself without loss of time. The victim further gets corroboration from the testimony of her mother Laxmiben, which is recorded at Exh. 10. The victim also gets complete corroboration from the testimony of Dr. Kalpeshbhai Patel, recorded at Exh. 25, regarding injury sustained by her on little finger of her right hand as well as rape on her. It is relevant to notice that the victim was examined by Dr. Patel on March 20, 2000 and at that time also, she had narrated the history of assault, wherein it was mentioned by her that she was subjected to rape forcibly by the appellant. The principles regarding appreciation of testimony of prosecutrix and evidentiary value of her testimony have been aptly laid down in **State of Punjab Vs. Gurmit Singh and Others, AIR 1996 SC 1393**. Those principles are to be found in paragraph-7 of the reported decision. It is *inter alia* observed by the Supreme Court that:-

> “The testimony of victim in cases of sexual offences is vital and unless there

are compelling reasons which necessitate looking for *corroboration* of her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complaints of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and

> circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

Viewed in the light of the principles laid down by the Supreme Court in above quoted decision, this Court finds that the testimony of the victim recorded in this case is vital and there are no compelling reasons which necessitate the Court to look for corroboration of her statements. Therefore, this Court does not find any difficulty to act on the testimony of the victim. The testimony of the victim recorded in this case inspires complete confidence of this Court, as it has inspired confidence of the learned Judge of the Trial Court, who had advantage of observing demeanour of the witnesses. Even if one were to seek corroboration to the statements made by the victim, the same is available in abundance on record. Therefore, this Court is of the firm opinion that the learned Judge of the Trial Court did not commit any error in coming to the conclusion that the appellant had threatened as well as injured the victim and thereafter, subjected her to forcible rape.

9.3 It is relevant to notice that at the time of incident, the victim was below 16 years of age. This is quite evident from contents of School Leaving Certificate wherein it is mentioned that date of birth of the victim was June 1, 1985. It is not even remotely suggested to the victim by the defence that she was on inimical terms with the appellant and was, therefore, out to implicate him falsely in such a serious case. The defence taken by the appellant that a false case was foisted upon the appellant by the victim and her relatives could not be probabilised by him. As explained by the Supreme Court in: (i) **Balwant Singh and Ors. Vs. State of Punjab, AIR 1987 SC 1080**; (ii) **Priti Chand Vs. State of Himachal Pradesh, AIR 1989 SC 702**; (iii) **Promod Mahto and Ors. Vs. State of Bihar, AIR 1989 SC 1475**; the victim of rape would not involve anyone falsely, because charge of rape on her is likely to tarnish her character and mar chances of marriage, if the victim is unmarried. In **Promod Mahto and Ors. *(supra)***, a plea was raised that case was foisted on accused due to communal feelings. While negativing the said contention, the Supreme Court has held that even if communal feelings had run high, it is unconceivable that an unmarried girl and two married women would go to the extent of staking their reputation and future in order to falsely set up a case of rape on

them for sake of communal interest. Here, in this case, the victim was unmarried on the day of incident and would not involve the appellant falsely in such a serious case.

9.4 As the appellant has failed to probabilise his defence that a false case was foisted upon him by the victim and her relatives, the case stated by the victim will have to be accepted. Thus, this Court finds that the conviction of the appellant for commission of offences punishable under Sections 376, 324, 506 (2) IPC is well-founded and no ground is made out by the learned Counsel of the appellant to interfere with the same in instant appeal.

10.1 This brings the Court to consider the question whether the punishment imposed on the appellant is appropriate and whether any case is made out by the learned Counsel of the appellant to reduce the same to the minimum prescribed by law. At the time of hearing of this appeal, the learned Additional Public Prosecutor has produced Jail Remarks-Sheet of the prisoner dated December 22, 2005 for perusal of the Court. It indicates that the High Court had granted temporary bail to the appellant for 14 days from August 22, 2005 and that the appellant was required to surrender to the Jail

Authorities on September 6, 2006, but the appellant has not surrendered to the Jail Authorities and is absconding regarding which a complaint has been lodged with Police Inspector, Raopura Police Station on September 22, 2005. This indicates that the appellant is a headstrong person and has scant respect for law as well as orders passed by the Court. Therefore, the claim of the victim, that she was threatened as well as injured with knife by the appellant and thereafter, subjected to forcible rape, deserves to be accepted. Once this claim is accepted, it becomes evident that the appellant had committed a heinous crime.

10.2 As explained by the Supreme Court in **Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, AIR 1996 SC 922**, rape is not only a crime against the person of the victim, it is a crime against the society, as it destroys the entire psychology of women and pushes her in deep emotional crisis. The Supreme Court has proceeded to explain in the said decision that rape is a crime against basic human rights and is also a violative of the victim's most cherished Fundamental Rights, namely, Right to Life, contained in Article 21. There is no manner of doubt that the measure of punishment in cases of rape should not depend on the social position of the party

injured but on the greater or lesser atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of the injured female.

10.3 It is well to remember that the appellant was married, having two children when he committed rape on the victim. This is not a case wherein offender is found to be in his early twenties. The record does not show that there was any sign of repentance on the part of the appellant. Crime of violence upon women should be severely dealt with. As explained by the Supreme Court in **State of Karnataka Vs. Puttaraja, 2004 SCC (Cri) 300,** leniency in matter of imposition of sentence in case of rape is against public interest. What is emphasised by the Supreme Court is that while imposing sentence for commission of offence punishable under Section 376 IPC, the Court should take into consideration deterrent theory of punishment and sentence to be imposed should be such which protects the society and deters others from committing such heinous crimes. Therefore, sentence of RI for 10 years and fine of Rs. 1,000/- (Rupees One Thousand Only), in default RI for 3 months, imposed by the Trial Court on the appellant cannot be considered to be harsh. On the facts and in the circumstances of the case, this Court is of the firm opinion that no case is

made out by the learned Counsel of the appellant to reduce the sentence to the minimum prescribed by law. The result of above discussion is that the appeal has no merits and is liable to be dismissed.

11. For the foregoing reasons, the appeal fails and is dismissed. *Muddamal* be disposed of in terms of directions given by the learned Judge of the Trial Court in the impugned judgment.

[J. M. PANCHAL, J.]

[H. B. ANTANI, J.]

/shamnath